U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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MAY 20 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 147 54566

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The petitioner filed an employment-based Form I-360, Petitioner for Amerasian, Widow(er), or Special Immigrant, on behalf of the beneficiary on February 15, 2001. The petition, WAC 01 118 53509, was initially approved by the Director, California Service Center on June 5, 2001. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition (NOIR) and his reasons therefore, first on January 23, 2003 and again on April 2, 2003.

Subsequent to its responses to the director's notices, the petitioner filed a second Form I-360 on behalf of the beneficiary for the same position on April 11, 2003. According to counsel, the petitioner filed the second petition, WAC 03 147 54566, while the first petition was pending in order to overcome the director's objection that the beneficiary did not have two years salaried experience prior to the filing of the visa petition. The director initially approved the second Form I-360 on September 30, 2003. Following a standard adjustment interview with the beneficiary and subsequent review of the evidence, the director again determined that the beneficiary was not eligible for the visa preference classification. On March 30, 2004, the director served the petitioner with a single NOIR for both previously approved petitions and set forth his reasons. The director subsequently exercised his discretion to revoke both petitions, and issued two separate decisions on June 14, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal.

Although counsel references both of the director's revocation decisions in his appellate brief, both counsel's discussion and the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, indicate that the petitioner appealed only the director's decision on the second Form I-360, WAC 03 147 54566. The record does not contain an appeal of the director's decision on the Form I-360 petition WAC 01 118 53509. The AAO's decision is therefore limited to the appeal properly before it. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as its religious director and instructor. The director determined that the petitioner had not established that the position qualified as that of a religious worker, that the beneficiary was qualified for the position within the organization, or that the petitioner had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and copies of previously submitted documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to

> revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

On appeal, counsel argues that as Citizenship and Immigration Services (CIS) approved both visa petitions, its "review of the record at the time of issuance revealed no basis for 'good and sufficient cause' to support revocation." Counsel argument is without merit. As noted by the court in *Matter of Ho*, the director's realization that a petition was incorrectly approved may, by itself, be good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be resolved is whether the petitioner established that the position qualified as that of a religious worker. Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker.

The proffered position is that of director of religious education and instructor. In its letter of April 7, 2003, the petitioner stated:

> As the Education Director, [the beneficiary] has been and will continuously be responsible for directing and coordinating all education ministry of our church. She will be responsible

> for organizing, planning, implementing and executing church education programs for our elementary, junior, and high school students. She will confer with our staff and evangelist to plan and develop student programs designed to meet the needs of the students such as Bible studies including Vacation Bible School, various fellowship meetings, open house, summer/winter retreats, sports contests, art/music recitals and concerts, field trips, parties, mission trips, graduation ceremonies . . . She will also direct and train religious education department staff including Sunday School teachers and volunteers and assists teachers in preparation of curriculum programs and materials.
>
> She will convey inspirational and religious messages through the counseling of the students and teaching the Word of God to the Sunday School Department . . . and training and teaching the Sunday School staff during weekly meetings.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The director determined that the job title indicated that the position is that of a religious profession, and that the evidence did not establish that the position requires formal religious training or theological education. We withdraw these determinations by the director. There is nothing in the job title of education director or instructor that makes it, inherently, a religious profession within the meaning of the regulation at 8 C.F.R. § 204.5(m)(2). Further, nothing in the regulation or statute requires specific religious training or education for the proffered position.

The petitioner submitted a letter from the beneficiary, which, according to her, reflects her daily working schedule. According to the beneficiary, from Tuesday through Saturday, she attends 9:00 a.m. services and 11:00 a.m. daily meetings with the pastoral staff; at 12:30, she prepares Bible study material for Friday night and Sunday morning services; at 2:00 p.m., she responds to and writes spiritual letters and e-mails to students; and at 3:00 p.m., she consults by telephone, visits the sick and comforts and prays for the family and students in the education department. The beneficiary also stated that she attends service twice a day on Sunday, meets with the pastoral staff, meets with Sunday school teachers to pray and check on them, attends the junior high and high school groups' English services, and leads worship for Sunday school elementary students, and preaches to them from the manuscript prepared earlier in the week.

The duties as outlined by the beneficiary in her letter are not as expansive as those listed by the petitioner in its April 7, 2003 letter. Furthermore, many of the duties enumerated by the petitioner in its letter, such as open house, sports contests, art/music recitals and concerts, field trips, parties, and graduation ceremonies are secular or administrative in nature.

The statement by the beneficiary is unclear as to the number of hours that she actually spends performing the duties of her job. Further, the beneficiary stated that she prepares Bible study material for all educational levels for Friday night and Sunday morning services; however, she indicates that she leads worship and uses her prepared manuscript only on Sunday and only for elementary students. Additionally, the petitioner has not established that the beneficiary's attendance at daily services is a required duty of the proffered position. Assuming the duties of the position are as the beneficiary alleges, her letter indicates that she spends at most 25 hours per week performing those duties.

Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full time employment. The petitioner has not established that it will provide permanent full-time employment to the beneficiary. Part-time employment is not qualifying employment for the purpose of this employment based visa petition.

The evidence does not sufficiently establish that the proffered position is not primarily secular in nature or that it offers full-time employment. The evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The second issue on appeal is whether the petitioner established that the beneficiary is qualified for the position within the organization.

The director determined that the proffered position is that of a religious professional and that, as such, the position requires formal training or theological education in order to perform the duties. The director further determined that the petitioner had not submitted evidence that the beneficiary had the appropriate training or education and therefore the petitioner had not established that the beneficiary was qualified for the position within the organization.

We withdraw this statement by the director. The duties as outlined by the petitioner do not reflect that the position requires a college degree or that the position is that of a religious professional as defined in 8 C.F.R. § 204.5(m)(3)(ii)(C). The evidence sufficiently establishes that the beneficiary qualifies for the position within the organization.

The third issue is whether the petitioner established that it had extended a qualifying job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated it would compensate the beneficiary at the rate of $1,500 per month. However, as discussed above, the petitioner has not established that the position would provide the beneficiary with full-time employment. The beneficiary's letter does not provide a clear statement of the time requirements of the proffered position and does not indicate that she will perform the duties of the position for at least 35 hours per week. As discussed above, CIS holds that employment of less than 35 hours per week is not full time employment. Part-time employment is not a qualifying job offer for the purpose of this employment based visa petition.

The evidence does not sufficiently establish that the petitioner has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not established that the beneficiary was engaged continuously in a qualifying religious occupation for two full years preceding the filing of the visa petition.

As discussed previously, the petitioner submitted no evidence of the work actually performed by the beneficiary. Further, the letter submitted by the beneficiary does not clearly indicate the number of hours each day that she spends in each of duties of the job. A generous reading of the beneficiary's letter indicates that she spends approximately 25 hours per week performing the duties of the proffered position.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The evidence does not establish that the beneficiary was continuously engaged in a religious occupation for two full years preceding the filing of the visa petition. This deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.